



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: JWK International Corporation; tg Bauer  
Associates, Inc.  
File: B-229831.4; B-229831.5  
Date: September 29, 1988

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### DIGEST

Since the General Accounting Office review confirms that awardee's proposal conforms to the solicitation's labor hour requirements, notwithstanding protesters' contrary allegations, an award based on this proposal was proper.

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### DECISION

JWK International Corporation (JWK) and tg Bauer Associates, Inc., protest the Naval Air Systems Command's announced decision to make an award of a time and materials contract (indefinite quantity-indefinite delivery time) to National Technologies Associates, Inc., under request for proposals (RFP) No. N00019-87-R-0059 for various support services. Both protesters contend that National's proposal contained less hours than required by the RFP, such that it could not be accepted for award.<sup>1/</sup>

We deny the protests in part and dismiss them in part.

The RFP enumerated various tasks to be performed and estimated that 104,000 hours of work would be required for each year of the contract, including the 2 option years. These work hours involved the labor categories of: project manager (9,000 hours), senior analyst (18,000 hours), analyst (38,000 hours), junior analyst (14,000 hours), technician (5,000 hours), technical assistant (10,000), technical typist (8,000 hours), and technical illustrator (2,000 hours).

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<sup>1/</sup> Bauer has also protested that the rejection of its proposal as unacceptable was arbitrary and that meaningful discussions were not conducted with it. This protest (B-229831.6) will be the subject of a subsequent decision.

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The RFP required submission of technical, personnel, and cost proposals. Technical and personnel proposals were to be evaluated only as acceptable or unacceptable. As to the cost evaluation, proposals were to be evaluated by multiplying labor rates for each labor category by the estimated hours involved. Award was to be made "based on the lowest, realistic, and reasonably-priced offer," including prices for the option years, from those offerors who were found to be in the acceptable category.

This procurement had previously been protested by National and JWK. We denied those protests in National Technologies Associates, Inc.; JWK International Corp., B-229831.2, B-229831.3, May 13, 1988, 88-1 CPD ¶ 453. JWK had protested that the Navy improperly reopened negotiations after selecting JWK for award and wrongfully disclosed JWK's price to National. National's protest was on other grounds not relevant here. The record showed that after the Navy received proposals, conducted discussions, received best and final offers (BAFO) and selected first National for award and then JWK, it further reviewed the proposals and found that they were unacceptable or contained such evaluated deficiencies that it had insufficient information to determine that either firm was entitled to the award. In our prior decision, we found that this constituted a reasonable basis to reopen negotiations and solicit new BAFOs. We also found no evidence to support JWK's contention that National had obtained improper knowledge of JWK's pricing.

The Navy's request for a second round of BAFOs was issued on February 12, 1988, to the four offerors considered in the competitive range, including National, JWK and Bauer, for response by February 19. The Navy states that it issued this request to "clarify the Navy's concerns regarding personnel, composite hourly rates, and the amount of competitive time proposed by some of the offerors, among other clarifications." The February 19 offeror responses were then evaluated by the Navy. The Navy states that as a result of its final evaluation National was selected for award since it was determined to be the lowest-priced acceptable offeror.

JWK protests that "after the Navy received Best and Final Offers from four firms [under this RFP] and repeatedly found that NTA's [National Technologies Associates, Inc.] proposal was technically unacceptable . . . NTA was given an improper opportunity to revise its proposal to the prejudice and

detriment of JWK."2/ JWK says further, however, that it "does not so much protest the fact that negotiations were reopened . . . but objects to the manner in which negotiations were conducted with National and National selected." Specifically, JWK argues that during the reopened negotiations, National submitted a revised proposal "based upon fewer work hours than formerly required under the RFP leading necessarily to a lower cost proposal than JWK's proposal, but at the price of technical adequacy." Further, JWK alleges that the revision in work hours was made to "suit National" and that JWK was improperly not given an opportunity during negotiations to propose on these allegedly relaxed requirements to its competitive disadvantage.

Bauer agrees with JWK and alleges that the Navy "obviously accepted a lower hour estimate on the part of National" and that this acceptance meant that the Navy "failed to conduct meaningful discussions" concerning required work hours with all other offerors including Bauer.

The Navy responds that National's proposed work hours fully conform to RFP requirements and that the Navy also found National's revised 45-hour work-week schedule to be acceptable based on adequate support.

From our review of the National BAFO, including the resumes of proposed personnel, and the Navy evaluation thereof, we find no evidence that National proposed less hours than required by the RFP. To the contrary, National's BAFO proposed the requisite hours in all labor categories.

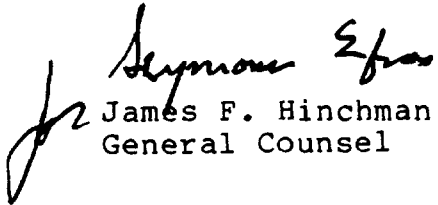
At the conference on the protest and its comments thereon, Bauer claimed that National's labor rates are unreasonable. However, Bauer's protest of the evaluation of National's proposal concerned only the number of labor hours proposed by National, not the reasonableness of its labor rates. Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1988), require a protest to include a detailed statement of the legal and factual grounds for the protest. Consequently, we do not permit the piecemeal development of the protest.

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2/ To the extent JWK's protest concerns the Navy's determination to reopen negotiations or the alleged improper disclosure of JWK's price, it only reiterates arguments already considered in our prior decision denying its protest; JWK offers no new evidence or arguments that show our prior decision was erroneous. Therefore, we dismiss those allegations.

Detyens Shipyards, Inc., B-229845, Apr. 19, 1988, 88-1 CPD ¶ 382. We see no reason why Bauer could not have raised these allegations in its initial protest. Consequently, we dismiss these allegations as untimely raised under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), since they were raised more than 10 working days after Bauer knew or should have known the circumstances leading to these allegations. Detyens Shipyards, Inc., B-229845, supra.

We deny the protests in part and dismiss them in part.

James F. Hinchman  
General Counsel